

(i) The fair market value of the land using the Uniform Standards for Professional Appraisal Practices, or based on an area-wide market analysis or survey;

(ii) The geographic area rate cap determined under paragraph (a)(4) of this section; or

(iii) The landowner offer.

(4) The State Conservationist, in consultation with the State Technical Committee, shall establish one or more geographic area rate caps within a state. The State Conservationist shall submit geographic area rate caps and supporting documentation to the Chief for approval. Each State Conservationist will determine the geographic area rate cap using the best information which is readily available in that State. Such information may include: Soil types, type(s) of crops capable of being grown, production history, location, real estate market values, and tax rates and assessments.

(b) *Acceptance of offered easement compensation.* (1) NRCS will not acquire any easement unless the landowner accepts the amount of the easement payment offered by NRCS. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement. By voluntarily participating in the program, a landowner waives any claim to additional compensation based on fair market value.

(2)(i) For easements or 30-year contracts valued at \$500,000 or less, NRCS will provide compensation in up to 30 annual payments, as requested by the participant, as specified in the option agreement to purchase or 30-year contract between NRCS and the participant.

(ii) For easements or 30-year contracts valued at more than \$500,000, the Secretary may provide compensation in at least 5, but not more than 30 annual payments. NRCS may provide compensation in a single payment for such easements or 30-year contracts when, as determined by the Chief, it would further the purposes of the program. The applicable payment schedule will be specified in the option agreement to purchase, warranty easement

deed, or 30-year contract between NRCS and the participant.

(c) *Reimbursement of a landowner's expenses.* For completed easement conveyances, NRCS will reimburse participants for their fair and reasonable expenses, if any, incurred for legal boundary surveys and other related costs, as determined by NRCS. The State Conservationist, in consultation with the State Technical Committee, may establish maximum payments to reimburse participants for reasonable expenses, if incurred.

(d) *Tax implications of easement conveyances.* Subject to applicable regulations of the Internal Revenue Service, a participant may be eligible for a bargain sale tax deduction which is the difference between the fair market value of the easement conveyed to the United States and the easement payment made to the participant. NRCS disclaims any representations concerning the tax implications of any easement or cost-share transaction.

(e) *Per acre basis calculations.* If easement payments are calculated on a per acre basis, adjustment to stated easement payment will be made based on final determination of acreage.

#### **§ 1467.9 Wetlands Reserve Enhancement Program.**

(a) *Wetlands Reserve Enhancement Program (WREP).* (1) The purpose of WREP is to target and leverage resources to address high priority wetlands protection, restoration, and enhancement objectives through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, and Indian Tribes.

(2) Funding for WREP agreements will be announced in the FEDERAL REGISTER.

(i) The announcement will provide details on the priorities for funding, required level of partner matching funds, ranking criteria, level of available funding, and additional criteria as determined by the Chief.

(ii) The Chief will determine the funding level for WREP on an annual basis. Funds for WREP are derived from funds available for WRP.

(3) Proposals will be submitted to the State Conservationist of the State in

which the majority of the project area resides.

(i) State Conservationists will evaluate proposals based on the ranking criteria established in the announcement and provide proposals recommended for funding to the Chief.

(ii) The Chief will evaluate proposals recommended for funding and make final funding selections, in accordance with ranking factors identified in the announcement.

(4) Selected proposals and associated funding will be provided to the State Conservationist to enter into WREP agreements with the eligible partner to carry out the project.

(b) *Reserved Rights Pilot.* (1) The Chief shall carry out a reserved rights pilot subject to the requirements established in this part.

(2) Under the reserved rights pilot, a landowner may reserve grazing rights in the warranty easement deed or 30-year contract, if the State Conservationist determines that the reservation and use of the grazing rights:

(i) Is compatible with the land subject to the easement or 30-year contract; and

(ii) Is consistent with the long-term wetland protection and enhancement goals for which the easement or 30-year contract was established; and

(iii) Complies with a WRPO developed with NRCS.

(3) The State Conservationist will provide public notice of the availability of the reserved rights pilot and the reserved rights template deed or 30-year contract, approved by the Chief, to be used in the pilot.

(4) Compensation for easements or 30-year contracts entered into under the reserved rights pilot will be based on the method described in §1467.8 with the following exceptions:

(i) Section 1467.8(a)(3)(i) is adjusted to reduce the fair market value of the land by an amount equal to the value of the retained grazing rights as determined by a Uniform Standards for Professional Appraisal Practices appraisal or a market survey; and

(ii) Section 1467.8(a)(3)(ii) is adjusted to reduce the geographic area rate cap determined as described in §1467.8(a)(4) by an amount equal to the value of the retained grazing rights.

#### § 1467.10 Cost-share payments.

(a) NRCS may share the cost with participants of implementing the WRPO on the enrolled land. The amount and terms and conditions of the cost-share assistance shall be subject to the following restrictions on the costs of establishing or installing conservation practices or activities specified in the WRPO:

(1) On enrolled land subject to a permanent easement, NRCS will offer to pay at least 75 percent but not more than 100 percent of such costs; and

(2) On enrolled land subject to a non-permanent easement, 30-year contract, or restoration cost-share agreement, NRCS will offer to pay at least 50 percent but not more than 75 percent of such costs.

(3) The total amount of payments that a person or legal entity may receive, directly or indirectly, for one or more restoration cost-share agreements, for any year, may not exceed \$50,000.

(b) Cost-share payments may be made only upon a determination by NRCS that an eligible conservation practice or component of the conservation practice has been implemented in compliance with appropriate NRCS standards and specifications; or an eligible activity has been implemented in compliance with the appropriate requirements detailed in the WRPO. Identified conservation practices or activities may be implemented by the participant, NRCS, or other NRCS designee.

(c) Cost-share payments may be made for replacement of an eligible conservation practice, if NRCS determines that the practice is still needed and that the failure of the original conservation practice was due to reasons beyond the control of the participant.

(d) A participant may seek additional cost-share assistance from other public or private organizations as long as the conservation practices or activities funded are in compliance with this part. In no event shall the participant receive an amount that exceeds 100 percent of the total actual cost of the restoration.

[74 FR 2328, Jan. 15, 2009, as amended at 74 FR 26284, June 2, 2009]